

## 21 C.J.S. Courts § 339

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### Courts

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### X. Clerks of Courts

### C. Powers and Duties

## § 339. Care and custody of funds

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  70

### Where a clerk of court receives money by virtue of his or her office, the clerk holds the same in trust.

Where a clerk of court receives money by virtue of his or her office, the clerk holds the same in trust.<sup>1</sup> The clerk must keep a complete and accurate record of all monetary transactions of the clerk's office.<sup>2</sup> The unauthorized removal or personal use of funds deposited in the clerk's office is impermissible and contrary to the requirement to keep a perfect account of such funds.<sup>3</sup>

If the clerk's investment of funds received by him or her in his or her official character is authorized, he or she is not considered a trustee in the sense that he or she is subject to constitutional and statutory provisions regulating investments by trustees; rather, he or she is an agent of the court and as such is subject to the court's direction.<sup>4</sup> It follows that a clerk who holds a litigant's funds pursuant to a court order pending resolution of the litigation does not have a fiduciary duty to deposit such funds in interest-bearing accounts where the court has not so ordered.<sup>5</sup>

It is common practice for law firms to maintain an account with the clerk and charge fees to that account, and a charge to a firm's account at the time of filing is equivalent to depositing a fee.<sup>6</sup> However, clerks of court should not be made tax collectors for a state, nor should the threshold to the justice system be used as a toll booth to collect money for random programs created by the legislature.<sup>7</sup> A statute requiring clerks of court to collect additional fees to be deposited in a special fund for a nonprofit corporation providing support and counseling for victims of family violence violates the constitutional right of access to courts and the separation of powers doctrine.<sup>8</sup>

*Effect of attorney's lien on funds.*

When a party pays into the clerk such sums as will satisfy a judgment awarded against that party, and prior to the payment of such sums into the court, an attorney's lien has attached, the clerk has a duty to retain that portion of the deposited funds to which the lien has attached.<sup>9</sup>

A clerk holding money in satisfaction of a judgment must await the exhaustion of the attorney's period for filing a lien or secure a release from the attorney of record prior to releasing the money; the clerk's failure to do so subjects the clerk to liability for the amount of the attorney's lien.<sup>10</sup>

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Footnotes

- 1 Okla.—Fidelity & Deposit Co. of Md. v. Rankin, 1912 OK 349, 33 Okla. 7, 124 P. 71 (1912).
  - 2 Mo.—State v. Hampton, 653 S.W.2d 191 (Mo. 1983).
  - 3 Mo.—State v. Hampton, 653 S.W.2d 191 (Mo. 1983).
  - 4 Ala.—Shelley v. Thomas, 232 Ala. 227, 167 So. 316 (1936).
  - 5 Ill.—Madlener v. Finley, 128 Ill. 2d 147, 131 Ill. Dec. 145, 538 N.E.2d 520 (1989).
  - 6 S.D.—Watertown Co-op. Elevator Ass'n v. South Dakota Dept. of Revenue, 2001 SD 56, 627 N.W.2d 167 (S.D. 2001).
  - 7 La.—Safety Net for Abused Persons v. Segura, 692 So. 2d 1038 (La. 1997).
  - 8 La.—Safety Net for Abused Persons v. Segura, 692 So. 2d 1038 (La. 1997).
  - 9 Neb.—Stover v. County of Lancaster, 271 Neb. 107, 710 N.W.2d 84 (2006).
  - 10 Ind.—In re Marriage of Hollingsworth, 671 N.E.2d 165 (Ind. Ct. App. 1996).
- As to liability of a clerk of court for funds, generally, see § 342.